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27 OPERATIONS INC., ANCESTRY.COM
28 INC., and ANCESTRY.COM LLC

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANTHONY SESSA and MARK SESSA, on
behalf of themselves and all others similarly
situated,

Plaintiffs,

v.

ANCESTRY.COM OPERATIONS INC., a
Virginia Corporation; ANCESTRY.COM, INC.,
a Delaware Corporation; ANCESTRY.COM
LLC, a Delaware Limited Liability Company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 2:20-cv-02292

**STIPULATION AND [PROPOSED]
PROTECTIVE ORDER**

1 IT IS HEREBY STIPULATED by and between the parties in this action, by and through
2 their counsel of record, as follows:

3 WHEREAS, pursuant to Rule 26(c)(1) of the Federal Rules of Civil Procedure, good cause
4 exists for the entry of the proposed protective order to ensure that disclosure of confidential
5 information produced by parties and non-parties in this proceeding is appropriately protected.

6 WHEREFORE, the parties hereby move the Court to enter the agreed stipulation and
7 proposed protective order on confidentiality, as set forth below:

8 1. Scope. All materials produced or adduced in the course of discovery, including
9 initial disclosures, responses to discovery requests, deposition testimony and exhibits, and
10 information derived directly therefrom (hereinafter collectively “documents”), shall be subject to
11 this Order concerning Confidential Information as defined below. This Order is subject to the
12 Local Rules of this District and the Federal Rules of Civil Procedure on matters of procedure and
13 calculation of time periods.

14 2. Confidential Information. As used in this Order, “Confidential Information” means
15 information designated as “CONFIDENTIAL-SUBJECT TO PROTECTIVE ORDER” or
16 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE
17 ORDER” by the producing party that falls within one or more of the following categories: (a)
18 information protected from disclosure by statute; (b) information that reveals trade secrets; (c)
19 research, technical, commercial or financial information that the party has maintained as
20 confidential; (d) medical information concerning any individual; (e) personal identity information;
21 (f) income tax returns (including attached schedules and forms), W-2 forms and 1099 forms; or (g)
22 personnel or employment records of a person who is not a party to the case. Information or
23 documents that are available to the public may not be designated as Confidential Information.

24 3. Highly Confidential – Attorneys’ Eyes Only Information. As used in this Order,
25 “Highly Confidential – Attorneys’ Eyes’ Only Information” means extremely sensitive information
26 or items whose disclosure to another party or non-party would create a substantial risk of serious
27 injury that could not be avoided by less restrictive means, such as trade secrets or commercial
28 information, including pricing, product development, profits, and marketing strategies.

1 4. Confidential Material. As used in this Order, Confidential Material includes both
2 “Confidential Information” and “Highly Confidential – Attorneys’ Eyes’ Only Information.”

3 5. Designation.

4 a. A party may designate a document as Confidential Information for
5 protection under this Order by placing or affixing the words “CONFIDENTIAL - SUBJECT TO
6 PROTECTIVE ORDER” on the document and on all copies in a manner that will not interfere
7 with the legibility of the document. As used in this Order, “copies” includes electronic images,
8 duplicates, extracts, summaries or descriptions that contain the Confidential Information. The
9 marking “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” shall be applied prior to or
10 at the time the documents are produced or disclosed. Applying the marking “CONFIDENTIAL –
11 SUBJECT TO PROTECTIVE ORDER” to a document does not mean that the document has any
12 status or protection by statute or otherwise except to the extent and for the purposes of this Order.
13 Any copies that are made of any documents marked “CONFIDENTIAL – SUBJECT TO
14 PROTECTIVE ORDER” shall also be so marked, except that indices, electronic databases or lists
15 of documents that do not contain substantial portions or images of the text of marked documents
16 and do not otherwise disclose the substance of the Confidential Information are not required to be
17 marked.

18 b. A party may designate a document as Highly Confidential – Attorneys’
19 Eyes Only Information for protection under this Order by placing or affixing the words “HIGHLY
20 CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER” on
21 the document and on all copies in a manner that will not interfere with the legibility of the
22 document. As used in this Order, “copies” includes electronic images, duplicates, extracts,
23 summaries or descriptions that contain the Highly Confidential – Attorneys Eyes’ Only
24 Information. The marking “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY –
25 SUBJECT TO PROTECTIVE ORDER” shall be applied prior to or at the time the documents are
26 produced or disclosed. Applying the marking “HIGHLY CONFIDENTIAL – ATTORNEYS’
27 EYES ONLY – SUBJECT TO PROTECTIVE ORDER” to a document does not mean that the
28 document has any status or protection by statute or otherwise except to the extent and for the

1 purposes of this Order. Any copies that are made of any documents marked "HIGHLY
2 CONFIDENTIAL – ATTORNEYS' EYES ONLY – SUBJECT TO PROTECTIVE ORDER"
3 shall be also be so marked, except that indices, electronic databases or lists of documents that do
4 not contain substantial portions or images of the text of marked documents and do not otherwise
5 disclose the substance of the Highly Confidential – Attorneys' Eyes Only Information are not
6 required to be marked. Material designated as "Highly Confidential – Attorneys' Eyes' Only
7 Information" may not be shared outside counsel in the above-captioned case.

8 c. The designation of a document as Confidential Material is certification by
9 an attorney or a party appearing pro se that the document contains Confidential Material as
10 defined in this order.¹

11 6. Depositions.

12 Unless all parties agree on the record at time the deposition testimony is taken, all
13 deposition testimony taken in this case shall be treated as Confidential Material until the
14 expiration of the following: No later than the fourteenth day after the transcript is delivered to any
15 party or the witness, and in no event later than 60 days after the testimony was given. Within this
16 time period, a party may serve a Notice of Designation to all parties of record as to specific
17 portions of the testimony that are designated Confidential Material, and thereafter only those
18 portions identified in the Notice of Designation shall be protected by the terms of this Order. The
19 failure to serve a timely Notice of Designation shall waive any designation of testimony taken in
20 that deposition as Confidential Information, unless otherwise ordered by the Court.

21 7. Protection of Confidential Material.

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23
24 ¹ An attorney who reviews the documents and designates them as CONFIDENTIAL –
25 SUBJECT TO PROTECTIVE ORDER or HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
26 ONLY – SUBJECT TO PROTECTIVE ORDER must be admitted to the Bar of at least one state
27 but need not be admitted to practice in the District of Nevada unless the lawyer is appearing
generally in the case on behalf of a party. By designating documents confidential pursuant to this
Order, counsel submits to the jurisdiction and sanctions of this Court on the subject matter of the
designation.

1 a. General Protections. Confidential Material shall not be used or disclosed by
2 the parties, counsel for the parties or any other persons identified in subparagraph (b) for any
3 purpose whatsoever other than to prepare for and to conduct discovery and trial in this action,
4 including any appeal thereof. In a putative class action, Confidential Material may be disclosed
5 only to the named plaintiff(s) and not to any other member of the putative class unless and until a
6 class including the putative member has been certified.

7 b. Limited Third-Party Disclosures. The parties and counsel for the parties
8 shall not disclose or permit the disclosure of any Confidential Material to any third person or entity
9 except as set forth in subparagraphs (1)-(9). Subject to these requirements, the following categories
10 of persons may be allowed to review Confidential Material:

- 11 (1) Counsel. Counsel for the parties and employees of counsel who
12 have responsibility for the preparation and trial of the action;
- 13 (2) Parties. Individual parties and employees of a party but only to the
14 extent counsel determines in good faith that the employee's
15 assistance is reasonably necessary to the conduct of the litigation in
16 which the information is disclosed;
- 17 (3) The Court and its personnel;
- 18 (4) Court Reporters and Recorders. Court reporters and recorders
19 engaged for depositions;
- 20 (5) Contractors. Those persons specifically engaged for the limited
21 purpose of making copies of documents or organizing or processing
22 documents, including outside vendors hired to process electronically
23 stored documents;
- 24 (6) Consultants and Experts. Consultants, investigators, or experts
25 employed by the parties or counsel for the parties to assist in the
26 preparation and trial of this action but only after such persons have
27 completed the certification contained in Attachment A,

1 Acknowledgment of Understanding and Agreement to Be Bound;
2 and

3 (7) Witnesses at depositions. During their depositions, witnesses in this
4 action to whom disclosure is reasonably necessary. Witnesses shall
5 not retain a copy of documents containing Confidential Material,
6 except witnesses may receive a copy of all exhibits marked at their
7 depositions in connection with review of the transcripts. Pages of
8 transcribed deposition testimony or exhibits to depositions that are
9 designated as Confidential Material pursuant to the process set out
10 in this Order must be separately bound by the court reporter and
11 may not be disclosed to anyone except as permitted under this
12 Order.

13 (8) Author or recipient. The author or recipient of the document (not
14 including a person who received the document in the course of
15 litigation); and

16 (9) Others by Consent. Other persons only by written consent of the
17 producing party or upon order of the Court and on such conditions
18 as may be agreed or ordered.

19 c. Control of Documents. Counsel for the parties shall make reasonable
20 efforts to prevent unauthorized or inadvertent disclosure of Confidential Material. Counsel shall
21 maintain the originals of the forms signed by persons acknowledging their obligations under this
22 Order for a period of three years after the termination of the case.

23 8. Inadvertent Failure to Designate. An inadvertent failure to designate a document as
24 Confidential Material does not, standing alone, waive the right to so designate the document;
25 provided, however, that a failure to serve a timely Notice of Designation of deposition testimony
26 as required by this Order, even if inadvertent, waives any protection for deposition testimony. If a
27 party designates a document as Confidential Material after it was initially produced, the receiving
28 party, on notification of the designation, must make a reasonable effort to assure that the document

1 is treated in accordance with the provisions of this Order. No party shall be found to have violated
2 this Order for failing to maintain the confidentiality of material during a time when that material
3 has not been designated Confidential Material, even where the failure to so designate was
4 inadvertent and where the material is subsequently designated Confidential Material.

5 9. Filing of Confidential Information. This Order does not, by itself, authorize the
6 filing of any document under seal. Any party wishing to file a document designated as
7 Confidential Material in connection with a motion, brief or other submission to the Court must
8 comply with LR IA 10-5 and relevant caselaw.

9 10. No Greater Protection of Specific Documents. Except on privilege grounds not
10 addressed by this Order, no party may withhold information from discovery on the ground that it
11 requires protection greater than that afforded by this Order unless the party moves for an order
12 providing such special protection.

13 11. Challenges by a Party to Designation as Confidential Information. The designation
14 of any material or document as Confidential Material is subject to challenge by any party. The
15 following procedure shall apply to any such challenge.

16 a. Meet and Confer. A party challenging the designation of Confidential
17 Material must do so in good faith and must begin the process by conferring directly with counsel
18 for the designating party. In conferring, the challenging party must explain the basis for its belief
19 that the confidentiality designation was not proper and must give the designating party an
20 opportunity to review the designated material, to reconsider the designation, and, if no change in
21 designation is offered, to explain the basis for the designation. The designating party must
22 respond to the challenge within five (5) business days.

23 b. Judicial Intervention. A party that elects to challenge a confidentiality
24 designation may file and serve a motion that identifies the challenged material and sets forth in
25 detail the basis for the challenge. Each such motion must be accompanied by a competent
26 declaration that affirms that the movant has complied with the meet and confer requirements of
27 this procedure. The burden of persuasion in any such challenge proceeding shall be on the
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1 designating party. Until the Court rules on the challenge, all parties shall continue to treat the
2 materials as Confidential Material under the terms of this Order.

3 12. Action by the Court. Applications to the Court for an order relating to materials or
4 documents designated Confidential Material shall be by motion. Nothing in this Order or any
5 action or agreement of a party under this Order limits the Court's power to make orders
6 concerning the disclosure of documents produced in discovery or at trial.

7 13. Use of Confidential Documents or Information at Trial. Nothing in this Order shall
8 be construed to affect the admissibility of any document, material, or information at any trial or
9 hearing. A party that intends to present or which anticipates that another party may present
10 Confidential Material at a hearing or trial shall bring that issue to the Court's and parties' attention
11 by motion or in a pretrial memorandum without disclosing the Confidential Material. The Court
12 may thereafter make such orders as are necessary to govern the use of such documents or
13 information at trial.

14 14. Confidential Material Subpoenaed or Ordered Produced in Other Litigation.

15 a. If a receiving party is served with a subpoena or an order issued in other
16 litigation that would compel disclosure of any material or document designated in this action as
17 Confidential Material, the receiving party must so notify the designating party, in writing,
18 immediately and in no event more than three court days after receiving the subpoena or order.
19 Such notification must include a copy of the subpoena or court order.

20 b. The receiving party also must immediately inform in writing the party who
21 caused the subpoena or order to issue in the other litigation that some or all of the material covered
22 by the subpoena or order is the subject of this Order. In addition, the receiving party must deliver
23 a copy of this Order promptly to the party in the other action that caused the subpoena to issue.

24 c. The purpose of imposing these duties is to alert the interested persons to the
25 existence of this Order and to afford the designating party in this case an opportunity to try to
26 protect its Confidential Material in the court from which the subpoena or order issued. The
27 designating party shall bear the burden and the expense of seeking protection in that court of its
28 Confidential Material, and nothing in these provisions should be construed as authorizing or

1 encouraging a receiving party in this action to disobey a lawful directive from another court. The
2 obligations set forth in this paragraph remain in effect while the party has in its possession,
3 custody or control Confidential Material by the other party to this case.

4 15. Challenges by Members of the Public to Sealing Orders. A party or interested
5 member of the public has a right to challenge the sealing of particular documents that have been
6 filed under seal, and the party asserting confidentiality will have the burden of demonstrating the
7 propriety of filing under seal.

8 16. Obligations on Conclusion of Litigation.

9 a. Order Continues in Force. Unless otherwise agreed or ordered, this Order
10 shall remain in force after dismissal or entry of final judgment not subject to further appeal.

11 b. Obligations at Conclusion of Litigation. Within sixty-three days after
12 dismissal or entry of final judgment not subject to further appeal, all Confidential Material and
13 documents marked “CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER” or “HIGHLY
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY – SUBJECT TO PROTECTIVE ORDER”
15 under this Order, including copies as defined in ¶ 5(a) and ¶ 5(b), shall be returned to the
16 producing party unless: (1) the document has been offered into evidence or filed without
17 restriction as to disclosure; (2) the parties agree to destruction to the extent practicable in lieu of
18 return; or (3) as to documents bearing the notations, summations, or other mental impressions of
19 the receiving party, that party elects to destroy the documents and certifies to the producing party
20 that it has done so. The receiving party shall destroy documents containing Confidential Material
21 and must certify the fact of destruction, but shall not be required to locate, isolate and return e-
22 mails (including attachments to e-mails) that may include Confidential Material, or Confidential
23 Material contained in deposition transcripts or drafts or final expert reports.

24 c. Retention of Work Product and one set of Filed Documents.
25 Notwithstanding the above requirements to return or destroy documents, counsel may retain (1)
26 attorney work product, including an index that refers or relates to designated Confidential Material
27 so long as that work product does not duplicate verbatim substantial portions of Confidential
28 Material, and (2) one complete set of all documents filed with the Court including those filed

1 under seal. Any retained Confidential Material shall continue to be protected under this Order. An
2 attorney may use his or her work product in subsequent litigation, provided that its use does not
3 disclose or use Confidential Material.

4 d. Deletion of Documents filed under Seal from Electronic Case Filing (ECF)
5 System. Filings under seal shall be deleted from the ECF system only upon order of the Court.

6 17. Order Subject to Modification. This Order shall be subject to modification by the
7 Court on its own initiative or on motion of a party or any other person with standing concerning
8 the subject matter.

9 18. No Prior Judicial Determination. This Order is entered based on the
10 representations and agreements of the parties and for the purpose of facilitating discovery.
11 Nothing herein shall be construed or presented as a judicial determination that any document or
12 material designated Confidential Material by counsel or the parties is entitled to protection under
13 Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as the Court may
14 rule on a specific document or issue.

15 19. Persons Bound. This stipulation shall take effect when entered and shall be binding
16 upon all counsel of record and their law firms, the parties, and persons made subject to this Order
17 by its terms.

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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED this 7th day of June, 2022

3 KNEPPER & CLARK LLC

COHEN-JOHNSON, LLC

5 By: /s/ Miles N. Clark

Miles N. Clark
6 Nevada Bar No. 13848
7 5510 So. Fort Apache Rd., Suite 30
Las Vegas, NV 89148

8 Attorneys for Plaintiffs

By /s/ H. Stan Johnson

H. Stan Johnson, Esq.
Nevada Bar No. 0265
375 E. Warm Springs Road, Suite 104
Las Vegas, Nevada 89119

9 Attorneys for Defendants Ancestry.com Operations
Inc., Ancestry.com Inc., and Ancestry.com LLC

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11 IT IS SO ORDERED:

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13 HON. BRENDA WEKSLER
14 UNITED STATES MAGISTRATE JUDGE

15 DATED: _____
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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ANTHONY SESSA and MARK SESSA, on behalf of themselves and all others similarly situated,

Case No.: 2:20-cv-02292

Plaintiffs,

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

V.

ANCESTRY.COM OPERATIONS INC., a Virginia Corporation; ANCESTRY.COM, INC., a Delaware Corporation; ANCESTRY.COM LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive.

Defendants.

The undersigned hereby acknowledges that he/she has read the Confidentiality Order dated _____ in the above-captioned action and attached hereto, understands the terms thereof, and agrees to be bound by its terms. The undersigned submits to the jurisdiction of the United States District Court for the District of Nevada in matters relating to the Confidentiality Order and understands that the terms of the Confidentiality Order obligate him/her to use materials designated as Confidential Material in accordance with the Order solely for the purposes of the above-captioned action, and not to disclose any such Confidential Information to any other person, firm or concern.

The undersigned acknowledges that violation of the Confidentiality Order may result in penalties for contempt of court.

Name:

Job Title:

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2 Employer: _____
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4 Business Address: _____
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10 Date _____
11 _____ Signature
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